IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 62

CHARLES B. MORRIS,
Appellant,

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF APPELLEE

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APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF APPELLEE.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in *The People* v. *Chicago Lloyds,* 391 Ill. 492 (November 19, 1945).

JURISDICTION.

Appellee has heretofore filed herein a motion to dismiss the appeal or affirm the judgment, including his statement disclosing matter or ground making against the jurisdiction of this Court, filed in accordance with the

provisions of Paragraph 3, Rule 12 of the Rules of this Court. On April 29, 1946, this Court entered an order providing that further consideration of the question of jurisdiction in this case be postponed until the hearing on the merits. We therefore present this Brief on the merits of the cause and in further support of the motion to dismiss or affirm and the statement making against the jurisdiction of the court heretofore filed herein.

Additional Statement of the Case.

Appellee agrees to the substantial part of Appellant's statement of the case and of the facts. However, there are a few additional material facts which should be called to the attention of the Court.

The claim of Appellant is presented upon a judgment entered in the Circuit Court of the City of St. Louis, Missouri on April 7, 1941 (R. 35). Defendants to that suit were. Chicago Lloyds, Associated Underwriters, Inc. and Robert A. Roessel, an attorney who had represented Chicago Lloyds in St. Louis. The Complaint (R. 29-33) in that cause alleged that Chicago Lloyds was authorized to do business in the State of Missouri and that Appellant was appointed agent for Chicago Lloyds to effect fire and other insurance in Missouri; that during the general business depression in 1930, 1931 and 1932, he became delinquent in his account with Chicago Lloyds to the extent of $2410.58; that various extensions to pay said sum were granted to him, but that finally on October 13, 1932, Robert A. Roessel, the agent and attorney for Chicago Lloyds and Associated Underwriters, Inc., complained to the Circuit Attorney of St. Louis, Missouri, that Appellant herein had committed embezzlement and converted to his own use premiums amounting to the afor

said sum; that Appellant was thereupon arrested and spent one day in jail; that on the following day, October 14, 1932, he was again arrested on said charge and remained in jail one day, and that on November 28, 1932, he was arrested and spent two days in jail; that subsequently, on December 2, 1932, an indictment was voted by the Grand Jury of the City of St. Louis against Appellant, in which he was falsely charged with having embezzled from Associated Underwriters, Inc. said sum of $2410.58; that a warrant was issued and Appellant was arrested and imprisoned in jail for eight days, at the expiration of which time he gave bond to answer said charge; that said cause subsequently came on for trial in said court and Appellant herein was found not guilty of said charge.

On the 24th day of August, 1934, Appellant filed his petition in the Circuit Court of the City of St. Louis against Chicago Lloyds, Associated Underwriters, Inc., and Attorney Robert A. Roessel seeking collection of damages for his false arrest, and that proceeding resulted in the judgment involved in this case. A Liquidator was appointed for Chicago Lloyds by the Superior Court of Cook County on February 9, 1938, and on April 21, 1938, Robert A. Roessel, who had appeared as counsel of record for the defendants in the suit brought by the Appellant herein in the Circuit Court of the City of St. Louis, was notified by the Liquidator of Chicago Lloyds that he should not continue in the defense of said suit. After various proceedings in the Circuit Court of the City of St. Louis and in the Federal Court, to which said cause was removed and later remanded, it came on for trial in said Circuit Court on the 17th day of March, 1941. On that date Robert A. Roessel was dismissed as a defendant and,

although the remaining defendants were not present in court, either in person or by counsel, the record shows separate answers were filed on behalf of the remaining defendants (R. 34). Said purported answers denied the jurisdiction of the Court, denied that plaintiff was prevented from conducting his occupation as insurance agent as alleged in his petition for the reason that prior to October 13, 1932, his license as an insurance agent and/or broker was revoked by the Insurance Department of Missouri for cause and denied all of the allegations contained in plaintiff's petition. The plaintiff waived a jury, submitting the cause to the Court, and the case was then heard *ex parte*. It must be noted that although the orders procured or caused to be entered by the Appellant in the St. Louis Court on March 17, 1941 (R. 34), and on April 7, 1941 (R. 35), recite that *parties hereto* appeared in Court and the Appellant in his Brief states that the Liquidator desires to *again* try this cause, the record is clear that neither Chicago Lloyds or Associated Underwriters were present in Court either in person or by counsel. The Liquidator never appeared or participated in the proceedings in the St. Louis Court.

On March 22, 1941, the clerk of the St. Louis court, at the direction of the Judge, wrote a letter to the Special Deputy in charge of the liquidation of Chicago Lloyds at Chicago, Illinois, advising him of the status of that case in the St. Louis court; that the Court had heard the case, taken the same under submission and had directed the Clerk to inform the Special Deputy and requesting the Special Deputy to make known his position as the Court desired to pass judgment upon the matter (R. 38). On March 26, 1941, counsel for the Liquidator wrote the Clerk of the Court of St. Louis, Missouri, in reply to his

letter advising that Chicago Lloyds was being liquidated in proceedings pending in the Superior Court of Cook County, Case No. 38 S 1022, of the Order appointing the Director of Insurance of Illinois as Liquidator entered February 9, 1938, and that Attorney Robert A. Roessel had withdrawn at the Liquidator's request and that it was the Liquidator's position that plaintiff in said suit was enjoined from proceeding to obtain judgment against Chicago Lloyds and quoting that portion of the order of liquidation enjoining all persons from obtaining or attempting to obtain preferences, judgments, attachments or other liens (R. 43).

On April 7, 1941, a judgment in the sum of $50,000.00 was entered in favor of the Appellant by the Circuit Court of the City of St. Louis against the defendants, excepting Attorney Robert A. Roessel. On the 10th day of June, 1942, the Liquidator filed in the Superior Court of Cook County his Tenth Report on Claims, including, among others, the claim of appellant with his recommendation of allowance or disallowance as to said claims. Notice of the Report on Claims was mailed to all claimants and thereafter the claim of Appellant and his objections to the Liquidator's recommendation of disallowance were referred to a Master in Chancery for hearing.

In the proceedings before the Master, it was stipulated that Appellant (claimant) on and prior to the 20th day of September, 1938, had notice of the liquidation proceedings in the Superior Court of Cook County, Illinois, and of the Order of Injunction issued by that Court (R. 24).

Chicago Lloyds was not a corporation, but an unincorporated association created under and by virtue of the

section of the Insurance Code applicable to individuals transacting insurance business in the State of Illinois under the name of Lloyds (Article V, Insurance Code of 1937, Chapter 73, Sections 698 and subsequent, Illinois Revised Statutes of 1945). Its only authority to conduct business in the State of Illinois was contained in a Certificate of Authority issued under the provisions of Section 699 of Chapter 73 of Illinois Revised Statutes of 1945 This Certificate authorized Chicago Lloyds to transact business from the 1st day of July of the year of issuance to the 30th day of June of the following year, and unless renewed, its right to conduct an insurance business terminated at the expiration date of the existing certificate.

SUMMARY OF ARGUMENT.

I.

The Exclusive Right of an Illinois Liquidator and the Illinois Courts to Adjudicate Claims Against the Res of an Insolvent Illinois Insurance Company Is Established By the Illinois Statutes, the Illinois Decisions, and By the Decisions of This Court.

A. The Illinois statutes and decisions confer upon the liquidator of an insolvent Illinois Insurance Company the exclusive right to adjudicate claims against the *res* of the insolvent company, the title to which *res* is in the liquidator by virtue of the Illinois liquidation statutes (P. 9 to P. 13).

B. The decisions of the United States Supreme Court approve the right of a liquidator to administer the *res* of the insolvent company and to adjudicate claims against it in accordance with the local law (P. 13 to P. 21).

II.

The Illinois Liquidation Order Entered More Than Three Years Prior to Appellant's Judgment and the Illinois Liquidation Statutes Are Entitled to Full Faith and Credit. Appellant's Judgment Against a Non-Existent Statutory Entity Is Not Binding on the Liquidator.

A. The Illinois Liquidation Statute, and the prior liquidation and injunction decree of the Superior Court of Cook County, Illinois, should be given the same full faith and credit as is urged by Appellant for his judgment (P. 22 to P. 28).

B. Chicago Lloyds ceased to exist either upon entry of the liquidation order or by expiration of its certificate

of authority to do business, and the judgment taken thereafter a nullity (P. 28 to P. 33).

C. Appellant filed his claim in the liquidation proceedings, submitted to the jurisdiction of the liquidating court and is bound by the orders and proceedings therein (P. 33 to P. 34).

III.

The Decision of the Illinois Supreme Court Upholds a Liquidation Procedure for Illinois Insurance Companies Analogous to the Federal Bankruptcy Act. Appellant Seeks a Decision That Would Force the Illinois Liquidator to Defend Claims Pending at the Date of the Liquidation Order in Any of the Forty-Eight States.

A. The decisions of this Court recognize the exclusive jurisdiction of the states to liquidate insolvent insurance companies created by them, inasmuch as those companies are excluded from the Federal Bankruptcy Act (P. 38 to P. 39).

B. Orderly administration and equitable distribution of the estate of an insolvent insurance company for the equal protection of all creditors requires that the liquidation proceedings in Illinois be equally binding on all creditors (P. 39 to P. 42).

ARGUMENT.

Question Presented.

MAY IT PLEASE THE COURT:

The basic question here presented is: Whether a prior Illinois judgment which vests title in a liquidator to the *res* of an insolvent insurance company, organized and doing business under Illinois law on the Lloyds' plan, for distribution according to the Illinois Statutes, is entitled to priority over an *ex parte* judgment entered in Missouri against the insolvent insurance company more than three years after the entry of the liquidation order in the Illinois court. The Missouri claimant asserts that his judgment is entitled to full faith and credit against the Illinois liquidator, and that he need not prove up his claim in the Illinois liquidation proceedings in accordance with the liquidation decree and the Illinois Statutes.

The Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, the appellee herein, contends that the Illinois courts and the Illinois liquidator have the exclusive right to adjudicate claims against the *res* of Chicago Lloyds.

I.

The Exclusive Right of an Illinois Liquidator and the Illinois Courts to Adjudicate Claims Against the Res of an Insolvent Illinois Insurance Company Is Established By the Illinois Statutes, the Illinois Decisions, and By the Decisions of This Court.

Illinois Statutes and Decisions.

The provisions of the Illinois Insurance Code concerning the status, rights, and title of the liquidator of an

insolvent Illinois insurance company are set forth in the appendix.

Pursuant to the provisions of the Illinois Insurance Code, a liquidation order was entered in the Superior Court of Cook County, Illinois, against Chicago Lloyds on February 9, 1938. This was a final order. It was taken by consent due to the admitted insolvency of Chicago Lloyds (R. 3). By virtue of the liquidation order, the Director of Insurance of the State of Illinois, as liquidator, became vested with title to all the assets of Chicago Lloyds on February 9, 1938 (§ 191, Illinois Insurance Code, chap. 73, § 803, Ill. Rev. Stats. 1945), and was charged with the duty to notify all creditors to present their claims (§ 193, Illinois Insurance Code, chap. 73, § 805 Ill. Rev. Stats. 1945). All rights of creditors and all other persons interested in the assets of the Chicago Lloyds were fixed by order of court as of noon, February 15, 1938, pursuant to Section 194 of the Illinois Insurance Code (chap. 73, § 806, Ill. Rev. Stats. 1945). On February 9, 1938, pursuant to the provisions of Section 189 of the Illinois Insurance Code (chap. 73, § 801, Ill. Rev. Stats. 1945), the Illinois court entered an order enjoining the obtaining of preferences, judgments, attachments or other liens against the company and its assets while in the possession of the Director of Insurance as liquidator.

What rights of the liquidator over the assets of Chicago Lloyds were established by the foregoing liquidation and injunction order?

Here we face one of the determining factors of this case. The Supreme Court of the United States has frequently stated that the rulings of the State courts interpreting their local law are usually conclusive and entitled

to the highest respect of the Federal courts. Thus, in *Detroit* v. *Osborne*, 135 U. S. 492, at p. 499, the Supreme Court stated:

> "It may be said generally that whenever the decisions of the state courts relate to some law of local character, which may have become established by those courts, or has always been a part of the law of the State, that the decisions upon the subject are usually conclusive, and always entitled to the highest respect of the federal courts. The whole of this subject has recently been very ably reviewed in the case of *Burgess* v. *Seligman*, 107 U. S. 20. Where such local law or custom has been established by repeated decisions of the highest courts of a State, it becomes also the law governing the courts of the United States sitting in that State."

The Illinois Supreme Court, after examining its local liquidation statute in the instant case (391 Ill. 492) makes the following statement at page 499 (R. 77):

> "In view of the foregoing we hold that the Director of Insurance of the State of Illinois, as liquidator of Chicago Lloyds, upon the entry of the decree of the superior court of Cook county of February 9, 1938, became vested with the title to all of its property, wherever situated, and that the courts of other States are required to recognize the rights of such liquidator, established by the judgment or decree authorized by the Illinois statute for the liquidation of insolvent insurance companies."

The Court further said at page 506 (R. 83):

> "So, in this case, the title of appellee to the property and assets of Chicago Lloyds is based upon a judgment. While Missouri would have the power to give priority to Missouri creditors in the property of Chicago Lloyds located in that State, (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160) it has not done so; nor is there any proof there ever were any assets

in Missouri at the time appellant obtained a judgment. The Illinois decree appointing a liquidator vested title and possession in him. This was known to appellant, because he filed a claim with the liquidator, in accordance with the Illinois statute. The superior court of Illinois, by a decree finding insolvency, thus had obtained jurisdiction of the *res* by the law vesting title in liquidator, and such liquidator is entitled to keep and retain such possession to the exclusion of the process of any other court. (*Harkin* v. *Brundage*, 276 U. S. 36, 72 L. ed. 457.) There being no Missouri law to the contrary this would likewise apply to the assets in Missouri. (*Clark* v. *Williard*, 292 U. S. 112, 78 L. ed. 1160.) Under the law both of Missouri and Illinois it is plain no possession could be had by virtue of a Missouri judgment entered long after a decree finding facts which would vest title in a liquidator. Full faith and credit requires the Missouri creditor claiming rights under a judgment to likewise recognize the binding effect of the Illinois judgment when he seeks satisfaction from assets in control of Illinois courts."

In *Evans* v. *Illinois Surety Company*, 319 Ill. 105, the Illinois Supreme Court held under a statute similar to the one involved in the present case that after the assets of a defunct insurance corporation had passed to a liquidator, a judgment taken against the corporation gave the plaintiff no rights against the liquidator. This case was cited favorably by the Illinois Supreme Court in the present case and its rule followed. The Illinois Supreme Court stated (R. 83):

> "*We have held under a similar law that a judgment against a corporation, after title to its assets had passed to a liquidator, gave plaintiff no rights.* (*Evans* v. *Illinois Surety Co.*, 319 Ill. 109.) The *Missouri court has reached substantially the same result.* (*McDonald* v. *Pacific States Life Ins. Co.*, 343

Mo. 1232, 124 S. W. 2d 1157.) The judgment of another State under the Federal statute enacted by authority of the full-faith-and-credit provision (28 U. S. C. A., sec. 687) is entitled to the *same* credit that it would have in the State of its rendition. *In Missouri, not only the statute, but the construction of the statute, is similar to the law of Illinois, and had a liquidator been decreed in the State of Missouri, appellant either could not have had his judgment or, if he obtained it after the decree of insolvency, could not have enforced it against the property in the hands of the liquidator.* He can have no greater rights in Illinois, under his judgment, than he could have in Missouri." (Italics ours)

In *People* v. *Niehaus*, 356 Ill. 104 at page 110, the Illinois Supreme Court, in discussing the powers of a liquidator under the Illinois Insurance Code, stated:

"• • • The Act gives him title to the assets of the insolvent company, and, contrary to the ordinary chancery receiver, this ownership and his powers are recognized in foreign jurisdictions."

The local law of Illinois is clear. It is well established that when an Illinois liquidator takes title to the *res* of an insolvent Illinois insurance company, judgments taken against the company subsequent thereto are not effective against the liquidator or the *res* in his possession.

Decisions of the United States Supreme Court

Having established what the local law of Illinois is, our next inquiry is whether this local law conflicts with the decisions of the Supreme Court of the United States. The decisions of the United States Supreme Court sustain the decision of the Illinois Supreme Court in the present case.

In the early case of *Relfe* v. *Rundle*, 103 U. S. 222, this Court in discussing the effect of a Missouri liquidation

proceeding involving an insurance company upon the nonresident creditors, policyholders and others, stated at page 226.

> "By the charter of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs. Every policyholder and creditor in Louisiana is charged with notice of this charter right which all interested in the affairs of the Corporation can insist shall be regarded. The appellees, when they contracted with the Missouri Corporation, impliedly agreed that if the Corporation was dissolved under the Missouri laws, the Superintendent of the Insurance Department of the State should represent the Company in all suits instituted by them affecting the winding up of its affairs."

In the case of *Clark* v. *Williard*, 292 U.S. 112, the question arose as to the binding effect of liquidation proceedings of an Iowa insurance company upon Montana creditors. This court indicated that the Iowa proceedings, transferring title to all the company's assets to the Iowa liquidator, were binding upon Montana creditors in the absence of a local policy of Montana providing that Montana creditors could proceed against assets located in Montana and thereby satisfy their claims. The decree of the Montana court was reversed by this court and remanded to enable the Montana court to determine whether there was such a local policy. The Montana Supreme Court determined that there was such a policy. That case again came before this court in *Clark* v. *Williard*, 294 U.S. 211. This court held that since Montana had a policy for the protection of local creditors out of assets located in Montana, the courts of Montana, in such a case, were not required

to give full faith and credit to the Iowa liquidation proceedings. This court said at page 213 (L.ed. 867):

> "Every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts. (Citing cases) Montana does not challenge the standing of this foreign liquidator as successor to the dissolved corporation or as owner of its assets. On the contrary his standing and ownership are now explicitly conceded. All that Montana does by the decree under review is to impose upon such ownership the lien of judgments and executions in conformity with local law. In this there is no denial to the statutes of Iowa or to its judicial proceedings of the faith and credit owing to them under the Constitution of the United States."

The Court further said on page 214 (L.ed. 868):

> "This is not to say that any uniform policy prevails among the states when liquidators and creditors thus compete with one another. The diversity of practice was pointed out, with citation of the precedents, when the case was here before. 292 U.S. 112, at p. 122, 78 L.ed. 1160, 1166, 54 S. Ct. 615. Some states prefer a rule of equal distribution and compel the local suitor to yield to the statutory successor. (*Martyne* v. *American Union F. Ins. Co.*, 216 N.Y. 183, 110 N.E. 502), though at times with precautionary conditions. 292 U.S. 112, at p. 129, 78 L.ed. 1160, 1170, 54 S. Ct. 615; *People* v. *Granite State Provident Asso.*, 161 N.Y. 492, 55 N.E. 1053. Other states give the local creditor a free hand, with the result that he may seize what he can find, though the assets of the debtor are dismembered in the process. *Lackmann* v. *Supreme Council, O.O.F.*, 142 Cal. 22, 75 P. 583; *Schloss* v. *Metropolitan Surety Co.*, 149 Iowa, 382, 128 N.W. 384; *Zacher* v. *Fidelity Trust & S. V. Co.*, 109 Ky. 441, 59 S.W. 493. Choice is uncontrolled, as between one policy and the other, so far as the Constitution of the nation has any

voice upon the subject. Iowa may say that one who is a liquidator with title, appointed by her statutes, shall be so recognized in Montana with whatever rights and privileges accompany such recognition according to Montana law. For failure to give adherence to that principle we reversed and remanded when the case was last before us. *Iowa may not say, however, that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets, and carry over into another state the rule of distribution prescribed by the statutes of the domicile.*" (Italics ours)

Riehle v. *Margolies*, 279 U.S. 218, is perhaps the most important case relied upon by the appellant in support of his position. This case established the rule that a federal receiver must accept state court judgments adjudicating claims against a defunct company in a federal receivership. This decision was based upon Section 265 of the Judicial Code, which in substance provides that at the time of the institution of a receivership in a federal court, suits then pending in state courts could proceed to judgment. The decision in no wise affects the liquidator's position in the present case but, in fact, suppprts his position. For in discussing the distinction between chancery receiverships and statutory liquidation, the court in that case stated, at page 228:

"Similarly it has been held, where a statutory proceeding for the winding up of an insolvent corporation is brought in the state of the incorporation, that the assets will be distributed only among those persons who have been found to be creditors either by that court or elsewhere with its leave; and that a judgment recovered in another state without leave from it will not entitle the plaintiff to share in the assets. *These decisions are not inconsistent with the conclusion stated above.*" (*i. e.*, the decision of the case)

(Italics ours) (Citing *Attorney General* v. *Legion of Honor,* 196 Mass. 151; *Hackett* v. *Legion of Honor,* 206 Mass. 139, 142.)

In *Attorney General* v. *Supreme Council A. L. H.,* 196 Mass. 151, 81 N.E. 966, the Supreme Court of Massachusetts held that it is within the province of the court which had taken the assets of the insolvent into its hands for distribution to determine who the creditors are and what is due them, and that a judgment obtained in another court after the institution of the receivership proceedings binds only the insolvent and not the receiver. Thus that court stated, at page 967:

> "By the decree dated August 12, 1904, this court, acting under Rev. Laws, c. 119, § 19, adjudged that the further continuance of business by the defendant corporation was hazardous to the public and to its certificate holders, and it took possession of the funds of the defendant corporation for the purpose of distributing its assets among its creditors and of closing its affairs. This had no direct effect on pending actions. It had, however, this indirect effect upon them. If the plaintiff in such an action wanted a judgment against the defendant corporation for some purpose other than a right to share in the assets sequestrated by and in the hands of this court, he could go on with his action. But if he wished to establish his right to share in the assets in the possession of this court the further prosecution of that action would not help him. To establish that right he had to prove his claim in this court or get an order from this court that a judgment in the action in the foreign court should establish his right to share in the assets here. It is for the court which has taken the assets of an insolvent into its hands for distribution and for that court alone to determine who its creditors are and what is due to them respectively."

The *Supreme Council A. L. H.* case was followed by the Supreme Court of Illinois in *Evans* v. *Illinois Surety Company*, 319 Ill. 105, which, together with the instant case, is determinative of the local law of Illinois. A similar policy is expressed in *McDonald* v. *Aetna Indemnity Co.*, 93 Conn. 194; 105 Atl. 480, 483 (1919); *Bailey* v. *Groton Mfg. Co.*, 113. Vt. 309, 34 Atl. (2d) 182 (1943); *Danforth* v. *National Chemical Co.*, 68 Minn. 308; 71 N.W. 274.

The New York liquidation statute covering the liquidation of domestic insurance companies is similar to the Illinois statute. One who filed his claim in a liquidation proceeding in the State of New York and was served with a copy of the injunction order issued by that court, was held to be guilty of contempt of the New York court in subsequently filing a suit in the State of Virginia against the company then in process of liquidation, although the plaintiff was a resident of Virginia and was served with a copy of the injunction order in the State of Virginia. In the case of *In re Emmet, In re Richmond Radiator Co.*, 164 Appellate Division 586, 150 N.Y.S. 398, the court said, at p. 399, 400:

> "By filing its claim with the superintendent of insurance against the insolvent corporation, the liquidation of which the state had undertaken, and by the service of the order of this court of the 16th of December, 1912, upon the appellant, the Supreme Court acquired jurisdiction over the appellant, and it was bound to obey its order. • • • "
>
> "I have no doubt but that the court had jurisdiction to make the order. The said Empire Surety Company was a New York corporation. The Supreme Court of this state had instituted a proceeding to liquidate its business and apply its assets to the payment of its debts. All the property of the corporation, wherever situated, thereby vested in the superintend-

ent of insurance for the purpose of liquidation. The Supreme Court had jurisdiction to take possession of its assets and direct their application to the creditors of the corporation, and it had jurisdiction to restrain the creditors of the corporation from taking proceedings against it for the purpose of recovering their claims, and to restrain the creditors from interfering with the possession of the property by the superintendent of insurance. * * * The superintendent of insurance was entitled to receive from the state of Virginia the proceeds of the funds deposited by the said Empire Surety Company in the state of Virginia in excess of any liens to which it was subject. An attempt by a creditor of the said company to obtain a lien upon that fund in the state of Virginia was an attempt to deplete the property of the said company which would come into the possession of the liquidator for the purpose of being applied to the payment of the corporation debts.

"* * * The questions, it seems to me, are whether the court had jurisdiction, which I think it clearly had; whether the court acquired jurisdiction over the person of the appellant, which I think it clearly did; and whether the appellant, by filing its claim in the United States District Court for the Western District of Virginia, violated the provisions of this injunction order, which I think it clearly did. The appellant was therefore in contempt, and the court has the power to punish it for such contempt."

In *Harkin* v. *Brundage*, 276 U. S. 36, and *Penn General Casualty Company* v. *Pennsylvania*, 294 U. S. 189, this court established the rule that the court which first acquires jurisdiction over the *res* is entitled to retain it and dispose of it in accord with the law and processes of its jurisdiction.

In the case of *Porter* v. *Sabin*, 149 U.S. 473, this court expressed the rule as follows (p. 479):

"When a court exercising jurisdiction in equity ap-

points a receiver of all the property of a corporation, the court assumes the administration of the estate; the possession of the receiver is the possession of the court; and the court itelf holds and administers the estate, through the receiver as its officer, for the benefit of those whom the court shall ultimately adjudge to be entitled to it. *Wiswall* v. *Sampson*, 14 How. 52, 65; *Peale* v. *Phipps*, 14 How. 368, 374; *Booth* v. *Clark*, 17 How. 322, 331; *Union Bank* v. *Kansas City Bank*, 136 U.S. 223; *Thompson* v. *Phenix Ins. Co.*, 136 U.S. 287, 297.

"It is for that court, in its discretion, to decide whether it will determine for itself all claims of or against the receiver, or will allow them to be litigated elsewhere. It may direct claims in favor of the corporation to be sued on by the receiver in other tribunals, or may leave him to adjust and settle them without suit, as in its judgment may be most beneficial to those interested in the estate. Any claim against the receiver or the corporation, the court may permit to be put in suit in another tribunal against the receiver, or may reserve to itself the determination of; and no suit, unless expressly authorized by statute, can be brought against the receiver without the permission of the court which appointed him. *Barton* v. *Barbour*, 104 U.S. 126; *Texas & Pacific Railway* v. *Cox*, 145 U.S. 593, 601."

From the foregoing authority it is clear that under the Illinois law the Illinois courts and the liquidator have the exclusive right to adjudicate claims against the *res* of an insolvent Illinois insurance company, the title to which has passed to the liquidator. This title and the right to administer the *res* and adjudicate claims in accordance with the local law is approved by the decisions of the Supreme Court of the United States.

Let us now apply this authority to the present case. Despite the fact that (1) title to all of the assets of Chicago

Lloyds was transferred to the Illinois liquidator on February 9, 1938; (2) appellant's claim was fixed as an unliquidated claim February 15, 1938; (3) an injunction order was entered enjoining claimant from securing judgments of which the appellant had notice, and by filing his claim was a party to the liquidation proceedings where the injunction was spread of record, appellant nevertheless recognizes the Illinois liquidator's title for the purpose of filing his claim and disregards it for the purpose of proving up his *ex parte* judgment in Missouri, entered not against the liquidator but against Chicago Lloyds, more than three years after the date of the Illinois liquidation order. He would disregard the judgment against Chicago Lloyds and treat it as a judgment against the liquidator so that he may share equally, with other creditors, in the *res*. Full faith and credit under such circumstances would amount to *res adjudicata* against the liquidator who was not a party to the appellant's judgment. It would entirely disregard the liquidator's title as recognized by Illinois and Missouri (*McDonald* v. *Pacific States Life Ins. Co.*, 343 Mo. 1232, 124 S.W. 2d 1157). It would likewise disregard appellant's fixed status as an unliquidated creditor, and the injunction order, and would confer greater rights on a Missouri creditor than on an Illinois creditor. A Missouri creditor could prove his claim outside the liquidation proceedings against the defunct company while an Illinois creditor would have to prove his claim in the liquidation proceedings against the liquidator.

II.

The Illinois Liquidation Order Entered More Than Three Years Prior to Appellant's Judgment and the Illinois Liquidation Statutes Are Entitled to Full Faith and Credit. Appellant's Judgment Against a Non-Existent Statutory Entity Is Not Binding on the Liquidator.

Appellant had notice by publication and mailing of the liquidation proceedings, and filed his unliquidated claim in the Illinois liquidation proceedings. As a creditor seeking to satisfy his claim against the Illinois *res*, he is bound by the Illinois statutes governing the liquidation of Chicago Lloyds. His rights were adjudicated at the time of the entry of the liquidation decree and his claim against the insolvent was fixed as an unliquidated claim subject to allowance or disallowance in accordance with the liquidation statutes of Illinois. The liquidation decree is *res adjudicata* of his rights (*Converse* v. *Hamilton*, 224 U. S. 243, 56 L. Ed. 749), and his subsequent judgment yields to the prior decree adjudicating his status as a creditor in the proceedings.

In its opinion in this case, the Supreme Court of Illinois said (R. 77):

> "If it be assumed appellant had the right to proceed to trial and judgment in the circuit court of the city of St. Louis after the liquidator had been appointed and had taken possession of all of the property of Chicago Lloyds, still, if such judgment be allowed full faith and credit by the courts of Illinois, it does not necessarily mean such judgment is entitled to be collected out of the assets of Chicago Lloyds."

The Court further said (R. 84):

> "The title of appellee is acquired under the statutes of Illinois and a decree of one of its courts of general jurisdiction. No authority has been called to our at-

tention which gives a judgment acquired against the insolvent debtor, after its assets have been taken possession of and vested in a liquidator, priority over a judgment or decree which requires the distribution of the assets among those filing claims in pursuance of the law. Under such circumstances it seems logical to hold appellant was bound under the full-faith-and-credit clause to recognize the effect of this Illinois decree, as the courts of Illinois would be required to do had the judgment in Missouri been first made a lien, and since the liquidator appointed by the Illinois court acquired possession first, any rights against such property under the Missouri judgment would be inferior to, and subject to the Illinois judgment and decree."

The liquidation decree of the Superior Court of Cook County, Illinois, constitutes an adjudication of the status of appellant, as a creditor of Chicago Lloyds, and the judgment which he subsequently chose to take outside of the liquidation proceedings cannot be used to create a status for his claim in the liquidation proceedings different than that fixed by the decree of liquidation.

The judgment sought to be proved in these proceedings is against Chicago Lloyds. It is sought to establish that judgment against the liquidator of Chicago Lloyds, who was invested with the title to all of its assets more than three years prior to the entry of Appellant's *ex parte* judgment in Missouri. The full faith and credit clause of the Constitution, as applied to judgments, necessarily assumes an identity of parties plaintiff and defendant. The appellant herein is the plaintiff in the judgment sought to be established in these proceedings and there is identity of party plaintiff. The defendant in the judgment was Chicago Lloyds, and appellant seeks to compel recognition of that judgment by the Illinois Court against the Liquidator, who was not a party to the judgment. There is no identity

of party defendants. Had appellant made the Liquidator a party to his judgment, the full faith and credit clause might then have been applicable. The Liquidator being a stranger to the judgment, that judgment cannot be recognized in the liquidation proceedings.

Claimant relies upon the full faith and credit clause of the Constitution to compel recognition of his judgment in the liquidation proceedings in Illinois. The Liquidator urges that the Illinois Insurance Code governing the liquidation of Illinois insurance companies is likewise entitled to protection under the full faith and credit clause, that such statutory provisions are binding upon appellant and that his judgment taken in disregard of those proceedings is not entitled to recognition herein.

Section I of Article IV of the Federal Constitution provides in part:

> "Full faith and credit shall be given in every state to the public acts, records and judicial proceedings of every other state."

This provision not only confers recognition in sister states of judgments of the state of the forum, but it likewise applies to the public acts and records of a sister state.

In *Clark* v. *Williard*, 292 U. S. 112, the Federal Insurance Company, an Iowa corporation, was placed in liquidation by a decree of an Iowa Court on the 25th day of September, 1931. The Iowa statute governing the liquidation of Iowa insurance companies is, in many respects, similar to that of Illinois. Each statute provides for the vesting of title to assets of the defunct corporation in a state liquidating officer or receiver. On May 10, 1932, approximately eight months after the entry of the liquidation decree, a Montana creditor, the appellant, took judgment against the defunct company. Thereupon the judg-

ment creditor sought leave to issue execution and levy upon certain monies and securities of the defunct company located in Montana. The Supreme Court of Montana sustained his right to do so. Upon certiorari to this Court, the judgment of the Montana Supreme Court was reversed for the reason that the state court had failed to give due faith and credit under the Federal Constitution to the Iowa statutes governing the liquidation of Iowa insurance companies. This court said on page 121:

> "We think the Supreme Court of Montana denied full faith and credit to the statutes and judicial proceedings of Iowa in holding, as it did, that the petitioner was a receiver deriving title through a judicial proceeding, and not through the charter of its being and the succession there prescribed. 'When the transfer of a debtor's property,' said the court, 'is the result of a judicial proceeding there is no provision of the constitution which requires the courts of another state to carry it into effect and as a general rule no state court will do this to the prejudice of the citizens of its own state,' citing *Reynolds* v. *Adden*, 136 U.S. 348, a case of insolvency proceedings *in invitum* against a natural person, and *Zachèr* v. *Fidelity Trust Co.*, 106 Fed. 593, an enforced assignment to the receiver of a corporation which retained its corporate life. Bankruptcy or insolvency proceedings, whether the debtor is a natural or a juristic person, confer upon the receiver or assignee a title which, generally speaking, is without recognition outside of the state of his appointment except in subordination to the claims of local creditors. *Security Trust Co.* v. *Dodd, Mead & Co.*, 173 U.S. 624; *Cole* v. *Cunningham*, 133 U.S. 107; *Oakey* v. *Bennett*, 11 How. 33, 44; *Barth* v. *Backus*, 140 N.Y. 230; 35 N.E. 425; *Ward* v. *Connecticut Pipe Mfg. Co.*, 71 Conn. 345; 41 Atl. 1057; *Gilbert* v. *Hewetson*, 79 Minn. 326; 82 N.W. 655. Upon the strength of these and like decisions the Montana

court has refused recognition to a receiver or liquidator who in truth is a statutory successor. Whether it would have favored that conclusion if it had correctly interpreted his standing, its opinion does not tell us. The case should go back to the end that the priority of the execution may be determined with understanding of the title displaced and overridden."

In the case of *Bradford Electric Light Company* v. *Clapper*, 286 U.S. 145, 76 L. Ed. 1026, Clapper was employed by the Bradford Electric Light Company and both parties were citizens of the State of Vermont. While in the State of New Hampshire, Clapper suffered injuries which resulted in his death, and his widow brought suit against the electric company in the State of New Hampshire in a tort action, which action was permitted by the New Hampshire Workmen's Compensation Act and judgment was recovered, which judgment was affirmed by the Supreme Court of New Hampshire. In that case the electric company defended on the ground that since both parties were residents of Vermont and had agreed by contract to be bound by the Vermont Workmen's Compensation Law, the action could not be maintained in New Hampshire. This Court reversed the judgment of the Supreme Court of New Hampshire and held that the parties were subject to the Workmen's Compensation Law of the State of Vermont.

In that case the Court indicated in its opinion that there was no public policy of the State of New Hampshire which would prevent that State from giving full faith and credit to the Workmen's Compensation Law of the State of Vermont, and the Court intimated that, had there been a public policy of the State of New Hampshire which would have barred recognition of the Workmen's Compensation Law of Vermont, judgment of the lower court

would have had to be sustained. The Court said on page 161, (L. Ed. 1036):

"Moreover, there is no adequate basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. No decision of the state court has been cited indicating that recognition of the Vermont statute would be regarded in New Hampshire as prejudicial to the interests of its citizens. In support of the contention that the provision of the Vermont Act is contrary to the New Hampshire policy, it is urged that New Hampshire's compensation law is unique among workmen's compensation acts in that it permits the injured employee to elect subsequent to injury, whether to bring a suit based upon negligence or to avail himself of the remedy provided by the Act; and that the legislature of New Hampshire has steadily refused to withdraw this privilege. But the mere fact that the Vermont legislation does not conform to that of New Hampshire does not establish that it would be obnoxious to the latter's public policy to give effect to the Vermont statute in cases involving only the rights of residents of that State incident to the relation of employer and employee created there. *Northern P. R. Co.* v. *Babcock*, 154 U.S. 190, 198, 38 L. ed 958, 960, 14 S. Ct. 978. Nor does sufficient reason appear why it should be so regarded. The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears he had no dependent there. It is difficult to see how the State's interest would be subserved under such circumstances, by burdening its courts with this litigation."

The Court further said on page 163:

"We are of opinion that the rights as between the Company and Leon Clapper or his representatives are to be determined according to the Vermont Act. • • •"

In the absence of a contrary public policy, this Court held in that case that the Workmen's Compensation Law of Vermont was applicable and binding upon the parties involved in that proceeding, and the judgment of the Supreme Court of the State of New Hampshire was reversed for the reason that it had not given full faith and credit to the Statutes of Vermont. The public policy of this State with reference to the liquidation of insolvent insurance companies is expressed in our statute, and that statute, under the decisions heretofore cited, is entitled to full faith and credit in sister states. The public policy of Illinois expressed in that statute takes precedence over a judgment of a sister state which was taken in contravention of the laws of Illinois expressing that policy.

Chicago Lloyds was not a corporation, and there was, for that reason, no method provided for its dissolution under the Statutes of Illinois governing dissolution of insurance companies (Article XIII, Chapter 73, Paragraph 799, *et seq.*, Illinois Revised Statutes 1945). Those Statutes provide for the dissolution of corporations (Paragraph 808, Chapter 73). Inasmuch as Chicago Lloyds was authorized to transact business under an annual certificate, no dissolution proceedings were necessary as its legal existence expired either on February 9, 1938, the date the liquidation order was entered, or on June 30, 1938, at the expiration of its certificate of authority.

Under Paragraph 87 of Article V of the Insurance Code (Paragraph 699, Chapter 73, Illinois Revised Statutes 1945), it is provided that "it shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this

Article shall terminate on the 30th day of June next following the date of issuance and may be renewed upon compliance with this Code."

Any company, therefore, carrying on an insurance business under Article V of the Insurance Code could only do so under a certificate of authority which expired on the 30th day of June following its issuance, and the certificate of authority of the company known as Chicago Lloyds necessarily elapsed under this Section of the Insurance Code on the 30th day of June following the entry of the order of liquidation on February 9, 1938. If Chicago Lloyds had any legal existence after the entry of the liquidation order, that existence necessarily terminated on the 30th day of the following June when its certificate of authority to carry on business expired, and the company known as Chicago Lloyds was therefore out of existence over three years prior to the date the Appellant's judgment was entered, on the 7th day of April, 1941.

The law under such circumstances is that the entry of a judicial decree terminating the right of a company to continue to transact business is equivalent to an order dissolving the company.

Thus in the case of *In re National Surety Company*, 283 N. Y. 68; 27 N.E. (2nd) 505, Cert. den. 311 U.S. 707), the Court of Appeals of New York said on page 507:

> "Under the above circumstances, since the statutes of New York governing the dissolution of delinquent insurers provide that an order may be obtained directing the immediate cessation of the corporate existence, the corporate life of National Surety Company ceased for all purposes everywhere upon the obtaining of such an order by the Superintendent of Insurance and the common-law rule became applicable that upon dissolu-

tion of the corporation all actions pending or thereafter instituted abate and judgments thereafter entered are null and void. *Pendleton* v. *Russell,* 144 U. S. 640, 645, 12 S. Ct. 743, 36 L. Ed. 574; *First National Bank* v. *Colby,* 88 U. S. 609, 615, 21 Wall. 609, 22 L. Ed. 687; *Rodgers* v. *Adriatic Fire Ins. Co.,* 148 N.Y. 34, 38, 42 N.E. 515."

Even though it may be contended that the entry of an order of liquidation for an unincorporated insurance company does not terminate its legal existence, nevertheless, when the certificate issued by the Director of Insurance authorizing Chicago Lloyds to transact business in the State of Illinois for the year 1938 terminated on the 30th day of June, 1938, by virtue of the foregoing statutory provision, the legal existence of Chicago Lloyds was at an end. It no longer could sue or be sued any more than a corporation can be sued after its dissolution or an individual after his death. (*Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574; *Oklahoma Nat. Gas Company* v. *Oklahoma,* 273 U. S. 257, 71 L. Ed. 634; *In re National Surety Company,* 283 N. Y. 68, 27 N. E. (2nd) 505 (Certiorari denied 311 U. S. 707).)

A judgment against a dissolved corporation is a nullity. (*Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574; *Oklahoma Nat. Gas Company* v. *Oklahoma,* 273 U. S. 257, 71 L. Ed. 634; *Evans* v. *Illinois Surety Company,* 319 Ill. 105). For the same reason a judgment against an unincorporated insurance company against which an order of liquidation has been entered and whose certificate of authority to continue as an insurance company has expired, is void. Inasmuch as Appellant's judgment was taken more than three years subsequent to the order of liquidation of Chicago Lloyds and almost three years after the expiration

of the certificate authorizing Chicago Lloyds to engage in the insurance business, that judgment is void and the full faith and credit clause of the Federal Constitution has no application to it. (*Pendleton* v. *Russell,* 144 U. S. 640; 36 L. Ed. 574; *Evans* v. *Illinois Surety Company,* 319 Ill. 105.)

In *Pendleton* v. *Russell,* 144 U. S. 640, 36 L. Ed. 574, Pendleton held a policy of insurance in the Knickerbocker Life Insurance Company of New York. After he died, suit was brought and judgment obtained in the Circuit Court of the United States for the Western District of Tennessee. On appeal to the Supreme Court of the United States, this judgment was reversed. In the meantime the insurance company was placed in liquidation in the State of New York. Subsequently the suit pending in the Circuit Court of the United States for the Western District of Tennessee came on for trial and judgment was taken by default. A certified copy of this judgment was filed with the receiver of the insurance company in New York, and the claim was rejected by the receiver. After various intervening proceedings, the case was decided by the United States Supreme Court, which held that the judgment obtained in the Circuit Court of the United States for the Western District of Tennessee was void and was not entitled to recognition under the full faith and credit clause of the United States Constitution in the liquidation proceedings in New York. The Court said on page 644 (L. Ed. 576):

> "The only question presented for our determination is whether the judgment of the Circuit Court of the United States for the Western District of Tennessee, rendered on the 25th of January, 1886, was valid as a claim against the estate of the dissolved insurance corporation in the hands of its receiver,

to be allowed in the distribution of its assets. The Court of Appeals, in affirming the order of the supreme court of New York at special term, disallowing the claim, held that the judgment was invalid, and placed its decision on the ground that the United States Circuit Court had not, at the time, jurisdiction of the defendant, The error alleged is that the court, in this ruling, failed to give that faith and credit to the judgment of the Circuit Court of the United States to which it was entitled. * * *"

"Looking at the judgment of the Circuit Court of the United States, we are satisfied that the ruling of the Court of Appeals was correct. That Judgment purports to be against the insurance company, but that company, at the time, had no legal existence. It had been dissolved and its franchises, rights, and privileges declared forfeited by a decree of the Supreme Court of New York, in a proceeding brought by the attorney-general of the State, in the name of the people, and a receiver appointed of the effects of the corporation. The judgment was therefore no more valid against a non-existing corporation than it would have been if rendered for a like amount against a dead man. The receiver was not substituted in the place of the dissolved corporation; no process or citation was issued by that court to bring him before it, nor any proceeding taken for that purpose. Nor would such a proceeding have had any effect, for, the corporation having expired, the suit itself had abated. It ceased to be a pending suit; and if it were otherwise, the receiver could not take charge of any proceeding in a foreign jurisdiction by commencing an action, or defending an existing action, without the express authority of the court, whose officer he was, so as to bind any property or effects in his hands as receiver."

In accordance with the rule announced by this Court in the foregoing case, if the judgment of appellant is void,

the full faith and credit provision of the Constitution has no application to it.

Appellant, who filed his claim in the Illinois liquidation proceedings on September 21, 1938, has contended that he had no notice of the injunction order (Br. 81, 83) and was not bound by the order of liquidation entered on February 9, 1938, which under the provisions of the Illinois Statute (Sec. 806, Chap. 73, Illinois Revised Statutes of 1945) fixed all rights, liabilities and claims as of 12:00 o'clock noon, February 15, 1938, and enjoined claimants and creditors from obtaining preferences, judgments, attachments or other like liens.

The contention that claimant had no notice of the injunction order is contrary to the record which clearly shows that claimant had notice (R. 24). Furthermore we believe that the proposition is elementary and the rule fully supported by authority that a general creditor who files his claim under an interlocutory order or decree (appointing a receiver and requiring all creditors to file claims) becomes a party to the proceedings and is bound by the orders and decrees entered therein. *St. Louis-San Francisco Railway* v. *McElvain*, 253 Fed. 123.

The filing of a claim by a creditor in receivership proceedings is equivalent to intervention, and the claimant becomes a party to the proceedings and is bound by the orders and decrees entered therein. *Bethke* v. *Grayburg Oil Co.*, 89 Fed. (2d) 536.

In the case of *Schwartz* v. *Randolph*, 72 Fed. (2d) 892, the Circuit Court of Appeals for the Fourth Circuit, in its opinion, stated the rule as follows at page 893:

> "These considerations, however, did not deprive the District Court in the proper exercise of its jurisdiction over the affairs of the corporation, of the

power to receive the claims of creditors and pass upon their merits. Such a power in receivership proceedings is universally recognized. (*Riehle* v. *Margolies*, and other cases cited.) The practice is analogous to that in bankruptcy when, under the provisions of the statute, creditors submit their claims to the jurisdiction of the court. The filing of the claim in Maryland was itself a submission of the matter to the determination of the court, and it was none the less significant that it was done in response to a notice to creditors necessarily given by the court in the usual manner to expedite the settlement of the estate. * * *"

And further stated at page 894:

"It has already been noticed that Schwartz became a party to the receivership proceedings when he intervened in the case. Thereby he submitted himself to the jurisdiction of the court and became bound by the decree which enjoined the institution of actions against the corporation. * * *"

Claimant makes some mention (B. 20, 73) of the two-year statute of limitation being a bar to *de novo* proof of his claim in the liquidation proceeding. Claimant had a suit on file in Missouri within the two-year period of the statute of limitations. The Illinois liquidation order recognized this and established claimant's rights as an unliquidated creditor as of February 15, 1938, pursuant to the terms of Section 194 of the Illinois Insurance Code (Par. 806, Chap. 73 Illinois Revised Statutes of 1945). The statute of limitations is therefore no bar. Furthermore the statute of limitations had not been pleaded and is not an issue in this case, and the claim being in an equity court is not subject to the defense of the statute of limitations.

Appellant's brief is devoted almost entirely to the application of the full faith and credit clause of the Federal Constitution. Some mention is also made of a violation

of the privileges and immunities clauses of Article IV of the Federal Constitution and the fourteenth amendment, and the equal protection and due process clauses of the fourteenth amendment. Appellant concedes that his argument on the full faith and credit clause is determinative of the application of the other constitutional provisions (Brief p. 93).

Appellee has clearly demonstrated the inapplicability of the full faith and credit clause of the Constitution to make a judgment against Chicago Lloyds *res adjudicata* against the liquidator.

Most of the cases cited by Appellant in his Brief involved chancery receiverships and, as pointed out by this court in *Riehle* v. *Margolies*, 279 U. S. 218 (see p. 16 of this Brief), those proceedings are to be distinguished from statutory liquidation proceedings. It would, therefore, serve no good purpose to discuss those various cases. A few of the cases cited by Appellant will be briefly discussed.

Counsel for Appellant has placed considerable reliance upon the case of *Magnolia Petroleum Co.* v. *Hunt* 320 U.S. 430 (Brief 52 and 70). In that case, Hunt obtained an award for injuries sustained by him under the compensation law of Texas against the company and was paid in accordance with the award. Hunt later brought a suit under the Louisiana Workmen's Compensation law to recover a second time against the same company for the same injury. This Court held that the judgment in the first suit was an adjudication of his rights and that Louisiana would have to recognize that judgment under the full faith and credit clause of the Federal Constitution. That was a simple case of former adjudication. The full faith

and credit clause was resorted to for the sole purpose of compelling Lousiana Courts to recognize the judgment. The rule announced therein is universally recognized.

Here the judgment is against Chicago Lloyds. It is sought to establish that judgment against the Liquidator of Chicago Lloyds. There is not identity of parties defendant as in the *Magnolia* case, and the rule of that case is therefore inapplicable.

We have in this case a statutory proceeding for the liquidation of an Illinois insurance company, in which proceeding a decree was entered fixing the rights of Appellant and enjoining proceedings to obtain judgments, and vesting title to all assets in the Liquidator. These proceedings ante-dated the judgment by three years. These proceedings and the decree of the court adjudicated the rights of Appellant in so far as the assets of Chicago Lloyds were concerned. While he might continue his suit in Missouri and obtain a judgment, that judgment would bind no one except the judgment debtor, Chicago Lloyds. It could not bind the Liquidator who was not a party to it. The *Magnolia* case furnishes no precedent in this case.

The case of *Titus* v. *Wallick*, 306 U. S. 282, upon which Appellant places reliance (Brief 47 and 72) is another case involving the doctrine of former adjudication, and in that respect is similar to the *Magnolia Petroleum Co.* case. There was identity of parties plaintiff and defendant. Here we have no such identity. The judgment debtor is Chicago Lloyds and it is sought, under the full faith and credit clause, to establish that judgment against the liquidator, who was not a party to it.

Much reliance is placed by Appellant on the case of *Broderick* v. *Rosner*, 294 U.S. 629 (B. 48, 55, 72). Broderick was the superintendent of banks of the State of New York and, as such, the liquidator of the involvent Bank of the United States, a New York corporation. He determined that a stock assessment was necessary to pay the bank's creditors and in accordance with the statutes of New York, the assessment was levied. He brought suit in New Jersey to recover the assessments from the residents of that state. The New Jersey courts denied recovery because of a New Jersey statute prohibiting suits of that type in New Jersey courts, unless they took the form of equity suits in which all creditors and stockholders would be necessary parties, an obvious impossibility in most cases. This Court held that the New Jersey statute and the decision of its Supreme Court violated the full faith and credit provision of the Federal Constitution and reversed the case.

It is difficult to determine how that decision supports Appellant's position in this case. This Court in that case held that the New York statutes governing the liquidation of a New York bank were binding on the New Jersey stockholders of the bank and that a New Jersey statute barring the New York liquidator from suing in New Jersey to enforce stockholders' liability was unconstitutional. The doctrine announced by this Court in that case is the identical doctrine we urge here. This Court said at page 643:

> "Here the nature of the cause of action brings it within the scope of the full faith and credit clause. The statutory liability sought to be enforced is contractual in character. The assessment is an incident of the incorporation. Thus the subject matter is peculiarly within the regulatory power of New York as the State of incorporation 'so much so' as was said in

Converse v. *Hamilton*, 224 U. S. 243, 260, 'that no other state properly can be said to have any public policy thereon. And what the law of Wisconsin (New Jersey) may be respecting the relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, is apart from the question under consideration.' • • • In respect to the determination of liability for an assessment, the New Jersey stockholders submitted themselves to the jurisdiction of New York. For 'the act of becoming a member (of a corporation) is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation."

The rule announced by this Court in that case applied to the instant case requires full faith and credit to be accorded everywhere to the liquidation proceedings involving Chicago Lloyds. The Appellant was bound by those proceedings and his judgment taken in disregard of them and in contempt of the court's injunction is not entitled to recognition therein.

III.

The Decision of the Illinois Supreme Court Upholds a Liquidation Procedure for Illinois Insurance Companies Analogous to the Federal Bankruptcy Act. Appellant Seeks a Decision That Would Force the Illinois Liquidator to Defend Claims Pending at the Date of the Liquidation Order in Any of the Forty-Eight States.

The Federal Bankruptcy Act provides for exclusive adjudication of claims by the bankruptcy court and specifically excepts insurance companies from the provisions of that act (11 U.S.C. Sec 22 (a) and 22 (b)); *Valley* v. *Northern Fire & Marine Ins. Co.*, 254 U.S. 348. The Supreme Court has indicated its disapproval of federal equity receiv-

erships over insolvent insurance companies. *Commonwealth of Pennsylvania* v. *Williams*, 294 U. S. 176; *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189. The liquidation of insolvent insurance companies is thus left to the states.

Many states recognize the title of the statutory liquidator in the state of the defunct company's domicil to all assets of the insolvent company. *Clark* v. *Williard*, 294 U. S. 211. Missouri recognizes the title of a foreign state liquidator to all of the assets of an insolvent insurance company. *McDonald* v. *Pacific States Life Insurance Company*, 343 Mo. 1232, 124 S. W. (2d) 1157. The issue which this Court must now decide is: Shall the Illinois Courts and the Illinois liquidator, with title to all the assets of Chicago Lloyds, have exclusive jurisdiction to adjudicate claims against these assets or may judgments be taken in sister states against the insolvent after the order of liquidation has been entered and be entitled to full faith and credit against the *Illinois liquidator* and paid out of the assets which he is marshalling and distributing?

The Appellee contends that all claims against the *res* in Illinois, consisting of the assets of Chicago Lloyds, the title to which is in the Liquidator, must be exclusively adjudicated by the Illinois courts and the Illinois liquidator. The appellant contends that a judgment taken in a foreign state, after the entry of the liquidation order, against Chicago Lloyds is binding on the liquidator, who was not a party to the judgment, and must be recognized by the liquidating court and paid out of the *res* in possession of the liquidator. What are the logical results of the rule contended for by the appellant?

This Court must hold that the full faith and credit clause of the Constitution requires that the Missouri judg-

ment against *Chicago Lloyds* be considered *res adjudicata* against the *Liquidator,* although he was not a party and did not present his defense to the original judgment proceedings. Furthermore, the liquidator would be required to defend claims pending against a company at the date of the liquidation order in the various states, thereby increasing the costs of the liquidation and reducing the amount distributable to creditors. Many fraudulent and fictitious claims might be reduced to judgment against the defunct company which would no longer be interested in defending against such claims. Such judgments and judgments by confession against the defunct company might become final and *res adjudicata* against the liquidator and the fund belonging to all creditors, even though the liquidator or the other creditors had no knowledge thereof. Such a rule disregards the fact that the *res* is being administered for all creditors. To allow a single creditor to recover in another forum a judgment which will have a conclusive effect in the distribution of the *res* belonging to all creditors is inconsistent with due process for such other creditors.

The instant case is an excellent example of the necessity of a liquidation statute binding on every one. Appellant, as an agent of Chicago Lloyds, became delinquent in the sum of $2,410.68 in his remittances to the company, (R. 31) and various extensions of time to pay were given by the company. He was finally arrested, on three occasions, charged with embezzlement, and spent one day in jail on each arrest (R. 32). The Circuit Attorney then presented the case to the Grand Jury, which returned an indictment charging appellant with embezzlement, and appellant, as he alleges, then spent eight days in jail. For some reason, which the record fails to disclose, appellant was found not

guilty of embezzlement, although his complaint admits a shortage in his accounts (R. 31). The Liquidator believed that appellant was bound by the liquidation statutes of Illinois and would, of necessity, have to make proof of his claim in the liquidation court. The trial court was so advised and no defense was made to the suit. The judgment resulted.

According to his uncontested allegations, he spent three days in jail because of his arrests and eight days in jail as a result of the indictment. That constituted his damage, except whatever damage may have resulted to his reputation because of the arrests. He alleges further damage in that he was prevented from continuing his business as an insurance agent (R. 33), but the record shows that his license to do an insurance business in Missouri had been revoked for cause by the Insurance Department of that State on October 13, 1932 (R. 34). Inasmuch as the first arrest of appellant on the embezzlement charge took place on October 14, 1932, he had been deprived by the State of his right to carry on an insurance business in Missouri prior to his first arrest and that alleged claim for damages is not tenable.

Had appellant proved his claim in the liquidation proceedings, it may well be that his recovery, if any, would have been much less than the amount of his judgment. This may account for his steadfast reliance upon the judgment.

Appellant has had an opportunity continuously since the date of the liquidation order to prove his claim in the liquidation proceedings in the same manner as all other creditors. Although he refused to make such proof (R. 44), it is conceivable, with leave of court, he could still

prove his claim *de novo*. Under the authorities cited in this brief, we urge that appellant's judgment is of no force and effect in the liquidation proceedings and that his sole recourse is to apply to the liquidation court for leave to prove his claim on the merits.

The position of the Illinois liquidator follows that of the Federal Bankruptcy Act and provides a single orderly process for adjudicating claims free from the inequitable results flowing from the rule urged by Appellant for adjudicating claims.

CONCLUSION.

The Illinois liquidator, the Appellee herein, submits that the decision of the Supreme Court of Illinois in this cause be affirmed by this Court on the merits, or in the alternative that this Court grant the liquidator's motion heretofore filed herein to dismiss appellant's appeal or to affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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APPENDIX.

Illinois Statutes Involved
(Illinois Insurance Code of 1937)

(Chapter 73, Illinois Revised Statutes 1945)

"*Sec. 699. s 87. Certificate of Authority.* It shall be unlawful for any domestic, foreign or alien Lloyds to transact business in this State unless it has first obtained and has in force a certificate of authority issued by the Director. All certificates of authority issued under the provisions of this Article shall terminate on the thirtieth day of June next following the date of issuance and may be renewed upon compliance with this Code."

"*Sec. 799. s 187. Scope of Article.* This article shall apply to every company which is doing or attempting to do, or which is representing that it is doing an insurance business in this State or which is in process of organization for the purpose of doing or attempting to do such business."

"*Sec. 801. s. 189. Injunction.* The court shall have jurisdiction, at any time after the filing of the petition to issue an injunction restraining such company and its officers, agents, directors, employees and all other persons from transacting any company business or disposing of its property until the further order of the court. The court may issue such other injunctions or enter such other orders as may be deemed necessary to prevent interference with the proceedings, or with the Director's possession and control or title, rights or interests as herein provided or to prevent interference with the conduct of the business by the Director, and may issue such other injunctions or enter such other orders as may be deemed necessary to prevent waste of assets or the obtaining of preferences, judg-

ments, attachments or other like liens or the making of any levy against such company or its property and assets while in the possession and control of the Director."

"*Sec. 802. s 190. Order of Rehabilitation or Liquidation.* On the return of such order to show cause and after a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the Director to take possession of the property, business and affairs of such company and to rehabilitate or liquidate the same as the case may be. The Director shall be responsible on his official bond for all assets coming into his possession."

"*Sec. 803. s 191. Title to Property of Company.* The Director and his successor and successors in office shall be vested by operation of law with the title to all property, contracts and rights of action of the company as of the date of the order directing rehabilitation or liquidation. The filing or recording of such order in the office of the Recorder of Deeds or the Registrar of Titles in any county of this State shall impart the same notice that a deed, bill of sale or other evidence of title duly filed for record by such company would have imparted."

"*Sec. 806. s 194. Rights and Liabilities of Creditors Fixed Upon Liquidation.* The rights and liabilities of the company and of its creditors, except those holding contingent claims, and of its policyholders, stockholders or members and of all other persons interested in its assets shall, unless otherwise ordered by the court, be fixed as of the date of the entry of the order directing liquidation. The rights of claimants holding contingent claims on said date shall be determined as hereinafter provided."